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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,097	12/01/2003	J. Michael Corrigan	00259P0005US	1762

32116 7590 12/08/2006

WOOD, PHILLIPS, KATZ, CLARK & MORTIMER
500 W. MADISON STREET
SUITE 3800
CHICAGO, IL 60661

EXAMINER

ALEXANDER, REGINALD

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 12/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/725,097

Applicant(s)

CORRIGAN ET AL.

Examiner

Reginald L. Alexander

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 14-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

This application contains claims 14-17 drawn to an invention nonelected with traverse in the paper dated 16 June 2006. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faddis et al.

There is disclosed in Faddis a device, comprising: an atomizing nozzle 94; a water supply 84 and a control 85, 14; an ozone generator 78, 79; and an air compressor 87. Faddis discloses all of the claimed subject matter except for the recited location of the air compressor. It would have been obvious to one skilled in the art to rearrange the location of the air compressor, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Claims 2-4 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faddis et al. in view of Karlson.

Karlson discloses the use of an air inlet filter 16, air drier 20 and muffler 21 all connected to an inlet of an ozone generator 23.

It would have been obvious to one skilled in the art to provide the device of Faddis with the filter, drier and muffler disclosed in Karlson, in order to enhance the air provided to the ozone generator.

Claims 1, 5, 9 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dettling et al. in view of Faddis et al.

Dettling discloses a refrigerated display case 10 comprising: a plurality of air atomizing nozzles 28 (col. 11, lines 65, 66) positioned proximate the display case and each including a water inlet 22 and an air inlet 36; an air compressor (inherent) connected between an air supply and the nozzles; and a water supply (col. 5, lines 62, 63) and control 26.

Faddis, as discussed above, discloses the use of an ozone generator for the mixture of water vapor and ozone as a sterilization agent for application.

It would have been obvious to one skilled in the art to provide the device of Dettling with the ozone generator taught in Faddis, in order to allow ozone to mix with the water vapor so as to provide for sterilization and humidification of food items within the display case.

In regards to the application of ozonated air to the products when the pressurized water is not being supplied, such would be the result of the combination of references when the water supply control is shutoff.

Claims 2-4 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dettling in view of Faddis as applied to claims above, and further in view of Karlson.

Karlson discloses the use of an air inlet filter 16, air drier 20 and muffler 21 all connected to an inlet of an ozone generator 23.

It would have been obvious to one skilled in the art to provide the device of Dettling as modified by Faddis with the filter, drier and muffler disclosed in Karlson, in order to enhance the air provided to the ozone generator.

Response to Arguments

Applicant's arguments filed 18 October 2006 have been fully considered but they are not persuasive.

Applicant argues that the Faddis reference fails to disclose an atomizing nozzle or any compressor for delivering ozone to an atomizing nozzle. Applicant has provided in the claims no structure which would define the claimed "atomizing nozzle" over that disclosed in Faddis. The Faddis nozzle emits a fine spray of ozone and water vapor. Thus, nozzle 94 of Faddis can be defined as an atomizing nozzle. In regards to the use of an air compressor, the pump 87 disclosed in Faddis can be defined as an air compressor. The function of a pump is to compress and move air by raising the pressure. In the case of Faddis the pump is used to deliver an ozone-oxygen mixture. By definition use of the pump will pressurize the mixture being delivered.

Applicant argues that the Faddis reference fails to disclose a nozzle proximate a product holding space or both a water inlet and air inlet. In regards to the location of the

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nozzle, use of the term "proximate" fails to provide any specific location other than near the product holding space. In regards to Faddis the nozzle is proximate the sterilization chamber 35, as proximate is broadly interpreted as being defined as. Applicant's claim 5 fails to define a separate inlet for water and air. There is only recited an inlet for air and water, this arrangement is met by the Faddis reference.

Applicant argues that the Dettling and Faddis references have been combined using hindsight and that there is no motivation to combine the references. In response to Applicant's argument that the conclusions of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. In response to Applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one skilled in the art. References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. In this case, producing an ozonated air source to sterilize and humidify a chamber is taught in the prior art combination.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

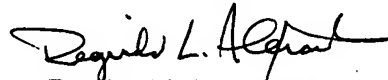
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Reginald L. Alexander
Primary Examiner
Art Unit 1761

rla
29 November 2006